

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THOMAS FRIEDRICHSEN,)	CASE NUMBER 5: 06 CV 2751
)	
Plaintiffs,)	JUDGE DONALD C. NUGENT
)	
vs.)	
)	MEMORANDUM OPINION
MASSILLON-CLEVELAND-AKRON)	
SIGN COMPANY, et al.,)	
)	
Defendants.)	

This matter is before the Court on the Motion of Defendant Key Bank to Dismiss (ECF #8) filed on December 18, 2006 and the Motion of Defendant Massillon-Cleveland-Akron Sign Company for Summary Judgment (ECF #9) filed on January 9, 2007. Although the time to respond to both motions has passed, Plaintiff has not responded to either motion and has not sought leave for an extension of time in which to respond. Additionally, Plaintiff failed to appear at a status conference with the Court on March 13, 2007, and the Court was unable to reach Plaintiff's counsel by phone on March 13, 2007, as there was no answer at counsel's office and no answering machine on which to leave a message.

The Court has reviewed the motions submitted by the Defendants and finds that both are well taken. As set forth in Defendant Key Bank's Motion to Dismiss, the Complaint fails to state a claim against Key Bank upon which relief could be granted. Specifically, each count fails under the Employee Retirement Security Act of 1974, as amended ("ERISA"), as to Key Bank, or is preempted by ERISA § 514, codified at 29 U.S.C. § 1144. Further, the ERISA breach of fiduciary duty claim is time-barred. ERISA § 413, codified at 29 U.S.C. § 1113.

Defendant Massillon-Cleveland-Akron Sign Company ("MCA") asserts in its Motion for Summary Judgment that Plaintiff's claims are barred by the applicable statute of limitations set forth in 29 U.S.C. § 1113; that even if the claims are not time barred, Plaintiff lacks legal standing to bring any of the claims he has asserted; and the claims asserted by Plaintiff were already dismissed by this Court in a prior case: *Thomas Friedrichsen v. Massillon-Cleveland-Akron Sign Company, et al.*, Case No. 5:05cv56. MCA's arguments are correct and well supported. There is no genuine issue of material fact and MCA is entitled to judgment on Plaintiff's complaint as a matter of law.

Accordingly, Defendants' motions are granted and this action will be terminated.

IT IS SO ORDERED.

/s/Donald C. Nugent
JUDGE DONALD C. NUGENT

DATED: March 14, 2007